



June 3, 2020

VIA [FOIAONLINE](#)

U.S. Environmental Protection Agency
Region #1

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of climate change, fossil fuel energy and clean energy, as well as the organization's long-standing interest in government accountability and transparency.

REQUESTED RECORDS

Sierra Club requests the following records in the possession, custody, or control of the U.S. Environmental Protection Agency (EPA) related to the **Schiller Station Power Plant**, located in Portsmouth, New Hampshire. **The timeframe for this request is Apr. 6, 2018 to the present.** Sierra Club requests:

- Any and all communication between **Granite Shore Power Schiller LLC** (including Atlas Holdings LLC, Castleton Commodities International LLC, or Energy Trading Innovations), operators of Schiller Station Power Plant, or **Public Service Company of New Hampshire** and EPA concerning the design, permitting, modification, repair, and/or construction of Schiller Station Power Plant's cooling water intake system.
- Any and all communication between **Granite Shore Power Schiller LLC** (including Atlas Holdings LLC, Castleton Commodities International LLC, or Energy Trading Innovations), operators of Schiller Station Power Plant, or **Public Service Company of New Hampshire** and EPA concerning the wedgewire screen intake system described in Effluent Limitations and Monitoring Requirement 11 of National Pollution Discharge Elimination System Permit No. NH 0001473.

FORMAT OF REQUESTED RECORDS

All records are specifically requested in electronic format in the manner in which they are ordinarily maintained. Under FOIA, you are obligated to provide records in the format requested if the record is readily reproducible by the agency in that format. 5 U.S.C. § 552(a)(3)(B). In the instance that any of the requested records in electronic form are too large to provide via e-mail, the Sierra Club can provide a box.com link or other online dropbox, allowing for easy upload of the records to an electronic folder. If you are able to provide some records more rapidly than others, we ask that you please forward those records as they become available for production.

EXEMPT RECORDS

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of the records requests are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records within the statutory time limit. 5 U.S.C. § 552(b).

RECORD DELIVERY

We appreciate a prompt determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please e-mail copies of the requested records to the e-mail address below. If the records are not available electronically, please deliver them to the physical address provided. EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines). Failure to comply within the statutory timeframe may result in Sierra Club filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to:

Zachary Fabish
zachary.fabish@sierraclub.org

Deliver physical documents to:

Sierra Club Environmental Law Program
Attn: Zachary Fabish
50 F Street, NW, Eighth Floor
Washington, D.C. 20001

FEE WAIVER REQUEST

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l).¹

Sierra Club is the nation's oldest grassroots non-profit organization with more than 3.5 million members and supporters nationwide. Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of environmental protection including climate change, fossil fuel energy, clean energy, and clean water. Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.²

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Sierra Club access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867,

¹ With the award-winning Sierra magazine and its extensive use of blogs to communicate with the public, Sierra Club would also be eligible for a fee waiver as a media requestor. 5 U.S.C. § 552(a)(4)(A)(ii); 40 C.F.R. § 2.107(c)(1)(iii); *see also* 40 C.F.R. § 2.107(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public).

² For recent examples, *see* FOIA Request Reference No. DOI-HQ-2017-2172 (fee letter waiver received Jan. 9, 2017); FOIA Request Reference No. DOI-HQ-2017-008402 (fee letter waiver received June 26, 2007); FOIA Request Reference No. DOI-HQ-2017-008571 & DOI-HQ-2017-008581 (fee letter waiver received June 27, 2017); FOIA Request Reference No. DOI-HQ-2017-008568 (fee letter waiver received June 28, 2017).

872 (D. Mass. 1984) (fee waiver provision intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.”).

As explained below, this FOIA request satisfies the factors listed in EPA’s governing regulations for waiver or reduction of fees, as well as the requirements for a fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to the monitoring and enforcement of the National Pollutant Discharge Elimination System (NPDES), in accordance with provisions of the CWA as promulgated by the EPA. As such, the documents concern “identifiable operations or activities of the government.”

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The requested records will allow Sierra Club to convey information to the public about the status of Granite Shore Power Schiller LLC’s compliance with effluent limitations mandated by the NPDES permit issued Apr. 6, 2018 and the EPA’s enforcement of such requirements. Once the requested documents are made available, Sierra Club will analyze them and present its findings to its members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of how the EPA is monitoring the agency-regulated activities and operations of generating facilities. Further, the requested records are not otherwise in the public domain and are not accessible other than through a FOIA request. Thus, the requested documents provide information that is not already in the public domain and are accordingly likely to meaningfully contribute to public understanding of governmental operations and priorities.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Sierra Club has long-standing experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, and the activities that properly fall within the mission of the EPA.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, such as: analysis and distribution to the media, distribution through publication and mailing, posting on its website, e-mail and listserv distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and over 30 million page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3.5 million people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies.³

Sierra Club intends to share the information received from this FOIA request with the general public, our impacted members across the country, the media, and our allies who share a common interest in the operations of the EPA and ensuring that federal air, water, and other environmental and public health safeguards are implemented and enforced.

Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations and activities. Disclosure of EPA’s enforcement of the NPDES, as well as communications regarding compliance with such, will significantly enhance the public’s understanding of whether the EPA is abdicating its responsibilities or advancing the agenda of polluters.

5. The requester has no commercial interest that would be furthered by the requested disclosure.

Sierra Club has no commercial interest in the requested records. Nor does it have any

³ For example, Sierra Club publicized results of its FOIA requests regarding outside influence on foreign travel at the EPA, a story that was covered by the New York Times. Lisa Friedman, Eric Lipton and Kenneth P. Vogel, *Ex-Lobbyist for Foreign Governments Helped Plan Pruitt Trip to Australia*, The New York Times, <https://www.nytimes.com/2018/05/02/climate/epa-pruitt-australia-travel.html>. Sierra Club also publicized the results of its FOIA requests regarding agency job freezes, a story that was covered by the Washington Post. Alexander Rony, *Trump Admin Policy Leaves 700 CDC Jobs Vacant*, The Planet, <http://www.sierraclub.org/planet/2017/05/trump-admin-policies-leave-700-cdc-jobs-vacant>; Lena H. Sun, *Nearly 700 vacancies at CDC because of Trump administration’s hiring freeze*, The Washington Post, https://www.washingtonpost.com/news/to-your-health/wp/2017/05/19/nearly-700-vacancies-at-cdc-because-of-trump-administration-hiring-freeze/?utm_term=.6c2e70d8581e.

intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. Sierra Club is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver, please send a written explanation for the denial. In the event of a fee waiver denial, please do not incur expenses beyond \$200 without first contacting our office for explicit authorization. All invoices should be billed to the Sierra Club Environmental Law Program, Attn: Zachary Fabish, 50 F Street, NW, Eighth Floor, Washington, D.C. 20001.

Please feel free to e-mail us at zachary.fabish@sierraclub.org, to discuss any aspect of this request. Thank you in advance for your assistance in this matter.

Sincerely,

/s/
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